

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&**

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 32923 of 2007(T)

PETITIONERS:

- 1. MOHAMMED KAISE, S/O. SRI.ABDUL HAKKIM,
RAHUMATH MANZIL, MUNDACKAL VILLAGE,
THEKKEVILA CHERRY, KOLLAM.**
- 2. JAISON G.OMMEN, S/O.LATE SRI.OOMMEN,
PROPRIETOR, M/S. ST.MARY'S CHASEW
FACTORY, PUTHOOR, RESIDING AT VAROOR
MADATHILAZHIKATHU VEEDU, PUTHOOR.**

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS:

- 1. THE DISTRICT SUPERINTENDENT OF POLICE,
KOLLAM.**
- 2. THE CIRCLE INSPECTOR OF POLICE, KOTTARAKKARA.**
- 3. THE SUB INSPECTOR OF POLICE, KOTTARAKKARA.**
- 4. THE DISTRICT LABOUR OFFICER, KOLLAM.**
- 5. THE SECRETARY, KERALA STATE KASHUVANDI
VIKASANA MASDOOR SANGH (BMS),
KOTTARAKKARA TALUK, KOLLAM 691 506.**
- 6. THE SECRETARY, KERALA KASHUVANDI THOZHILALI
CONGRESS (INTUC), KOTTARAKKARA TALUK, DO. DO.**

**7. THE SECRETARY, KASHUVANDI THOZHILALI KENDRA
COUNCIL (AITUC), KOTTARAKKARA TALUK, DO. DO.**

**8. THE SECRETARY, KASHUVANDI THOZHILALI
UNION (CITU), KOTTARAKKARA TALUK, DO. DO.**

**9. THE SECRETARY, KERALA STATE CASHEW NUT FACTORY
WORKERS UNION(KTUC), KOTTARAKKARA, DO. DO.**

**10. THE SECRETARY, KERALA CASHEW NUT FACTORY
WORKERS UNION(UTUC), KOTTARAKKARA, DO. DO.**

BY GOVT. PLEADER SRI.P.A.SALIM

BY ADV. SRI.M.K.CHANDRA MOHANDAS

SRI.R.MURALEEDHARAN PILLAI(MADANTHACODU)

SRI.H.B.SHENOY

SRI.ASHOK.B.SHENOY

SMT.LAKSHMI B.SHENOY

SRI.THOMAS P.MAKIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX IN WPC 32923/2007

PETITIONER'S EXHIBITS:

**EXT. P1 TRUE COPY OF THE AGREEMENT FOR SALE DT. 20.8.07
ENTERED INTO BETWEEN THE FIRST AND SECOND PETITIONERS**

**EXT. P2 TRUE COPY OF THE CRIMINAL COMPLAINT DT. 31.10.07
SUBMITTED BY THE FIRST PETITIONER BEFORE THE FIRST RESPONDENT**

RESPONDENT'S EXHIBITS:

**ANNEXURE A TABULAR STATEMENT SHOWING DUES ON ACCOUNT OF
LEAVE WITH WAGES, HOLIDAY WAGES AND BONUS FOR THE YEAR 2007
PAYABLE TO SHELLING WORKERS**

**ANNEXURE B TABULAR STATEMENT SHOWING DUES ON ACCOUNT OF
LEAVE WITH WAGES, HOLIDAY WAGES AND BONUS FOR THE YEAR 2007
PAYABLE TO GRADING WORKERS**

**ANNEXURE C TABULAR STATEMENT SHOWING DUES ON ACCOUNT OF
LEAVE WITH WAGES, HOLIDAY WAGES AND BONUS FOR THE YEAR 2007
PAYABLE TO PEELING WORKERS**

**ANNEXURE D TABULAR STATEMENT SHOWING DUES ON ACCOUNT OF
GRATUITY PAYABLE TO WORKERS WHO RETIRED DURING 2004 TO 2007 AND
NOT PAID TILL DATE TO 21 RETIRED WORKERS**

**ANNEXURE E TABULAR STATEMENT SHOWING DUES ON ACCOUNT OF
GRATUITY PAYABLE TO WORKERS WHO RESIGNED DURING THE PERIOD
FROM 2002 TO 2006**

/TRUE COPY/

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 32923 of 2007

JUDGMENT

Balakrishnan Nair, J.

The first petitioner was the owner of a Cashew factory at Mylom. The same has been purchased by the second petitioner. They have jointly moved this application for police protection, alleging that the workmen represented by respondents 5 to 10 are causing obstruction to the removal of the processed cashew kernels. They are also causing obstruction to the ingress and egress to the factory premises. The petitioners also submitted that they are ready to settle the claims of the workmen arising out of the transfer. But, the unions are not co-operating. Therefore, this writ petition is filed seeking appropriate reliefs.

2. After hearing both sides, we passed an interim order on 15.11.2007, which reads as

follows:

"The petitioners have filed a joint undertaking dealing with the liabilities due to the workmen including statutory liabilities. The learned counsel for R6 and R9 submitted that the said undertaking does not deal with the arrears of wages and bonus, leave wages, etc. payable to the workmen. All unions are directed to file a statement concerning the amount due. The learned counsel for the petitioners pray for an interim order as the value of cashew kernels is diminishing every day. He also submits that the petitioners are ready to furnish security to secure the amounts due to the workmen.

After hearing the submissions of both sides, we feel that the petitioners should be allowed to remove the cashew kernels in the factory in the interest of both sides subject to conditions. If the

petitioners furnish Bank guarantee for Rs.11 lakhs to the fourth respondent and proof of the same is produced before the second respondent he shall ensure that protection is granted to remove the cashew kernels now available in the factory."

Pursuant to the said interim order, the petitioners furnished bank guarantee before the District Labour Officer and processed cashew kernels were removed. Later, the petitioners have filed a reply affidavit pointing out the amounts due to the workmen, according to them. Respondents 6 and 9 have filed a statement setting out their claim regarding the amounts due from the petitioners to the workmen. Now, both sides agree that the writ petition can be disposed of by issuing directions to the fourth respondent to settle the dispute and disburse the amounts found due to the workmen according to the said officer.

3. The claim of the workmen come under the following heads:

1. Dues to Kerala Cashew Workers' Welfare Fund Board.
2. Dues on Leave with wages, Holiday Wages and Bonus for the year 2007.
3. Dues on arrears of wages payable up to November, 2007.
4. Dues on Gratuity payable to the workmen who retired during the period 2004 to 2007 and
5. Dues on gratuity payable to workers who resigned during the period from 2002 to 2006.

4. The Kerala Cashew Workers' Welfare Fund Board has got its own statutory machinery to recover the amount due to it. The District Labour Officer is the statutory authority to settle the claim of the workmen for payment of gratuity amounts. Normally, regarding the wages, the holiday

wages, the arrears of wages, etc. the District Labour Officer has got only conciliation powers. If there cannot be any settlement, the matter has to go to the Labour Court on the reference of the Government or the petitioners have to approach the Labour Court directly under Section 33C(2) of the Industrial Disputes Act. But, this being a time consuming process, both parties agreed to leave the matter for the decision of the District Labour Officer. They want liberty only to challenge the decision of the District Labour Officer, if it is manifestly wrong.

In view of the fact that we have granted protection to the petitioners subject to the condition of furnishing bank guarantee for Rs.11 lakhs, it is only proper for this Court to issue consequential orders also. Therefore, the writ petition is disposed of with the following directions:

1. The claims of the workmen up to the date of transfer of the factory, i.e. 20.11.2007, shall be settled by the District Labour Officer.

2. The District Labour Officer shall finally settle the claim of the workmen for payment of gratuity within two months from the date of production of a copy of this judgment. The parties shall file their claims and counter claims within three weeks from today before the District Labour Officer.

3. The claim for leave with wages, holiday wages, arrears of wages, bonus, etc. mentioned above shall also be decided by the District Labour Officer, after hearing both sides, within two months from the date of receipt of a copy of this judgment. The parties shall also file their claims and counter claims within three weeks from today.

4. If there is any manifest error in the decision of the District Labour Officer on the above claims, the parties will be free to work out their remedies

against it.

5. The petitioners shall renew the bank guarantee till the final decision is taken by the District Labour Officer and the amounts due are disbursed to the workmen/parties concerned. If there is delay from the part of the petitioners to renew the bank guarantee in time, the District Labour Officer will be free to encash the same and keep the money in any nationalised or Co-operative Bank.

6. The parties shall appear before the District Labour Officer on 28.12.2007.

(K.Balakrishnan Nair, Judge)

5th December, 2007

(K.P.Balachandran, Judge)

tkv